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THE NEGRO DEFINED.

In many of the states where a considerable portion of the population is colored, statutes define the term negro and establish his status where the same is considered, because of local conditions, as essentially different from that of Caucasians. Where legislatures have either negligently or intentionally left the terms "negro" and "colored" undefined, courts have faced difficulty in reaching exact decisions on the point of just what proportion of negro blood in a person of mixed racial descent will constitute him or her a "negro" or "colored." The question is purely academic, and its settlement lies largely in the discretion of the court, in combining technical definitions of ethnological experts and accepted public opinion on the subject.

In the recent case of *State of Louisiana v. Treadway*, 52 So., 500, an exhaustive review of statutory and judicial law resulted in a divided court on the question in issue. Here the defendant, a male octroon, was indicted, charged with having lived in concubinage with a female member of the Caucasian race. The statute governing the alleged offense made criminal, concubinage between members of the Caucasian race and members of the negro or black race.

The decision hinged on the question in issue: "Was an octroon a member of the negro or black race?" The court decided, three to two, that the defendant, an octroon, was not a negro within the meaning of the statute.

The dissenting opinion draws no distinction between negroes and colored persons, claiming that the terms were synonymous by popular usage and legislative intent, basing their opinion on the decision in the case of *Lee v. New Orleans and Great Northern Railroad Co.*, 125 La., 236. Here the court holds that, "since emancipation, the word colored person and negro have been used interchangeably." This appears to be erroneous in view of the accepted definitions, expressed legislation and judicial opinions. In the case of *Jones v. The Commonwealth*, 80 Va., 538, the court held that a man of mixed blood is not a negro unless he has at least one-fourth negro blood in his veins. With the possible exception of Virginia, the term "negro" has not been recognized as including within its meaning persons of mixed negro blood, but on the contrary has been so used only when coupled with

defining words or a definition adopted elsewhere statutorily. *Mississippi Code* of 1906, Sect. 3244; *Georgia 2 Civil Code* 1895, Art. 3, Sect. 1820; *South Carolina Constitution* of 1895, Art. 3, Sect. 33; *West Virginia Code* of 1906; *Alabama Constitution* 1901, Sect. 102; *Virginia Code* of 1873, p. 1208, Chap. 192, Sect. 8; *Kentucky Revised Statutes* of 1894, Sect. 2097-2098; *Texas Revised Statutes* 1895, Art. 3908.

A resume of the statutes and judicial decisions shows a distinct classification in which colored persons are differentiated from both negroes and Caucasians, and the only difficulty lies in determining the fraction of negro blood in any person which will constitute him a member of the negro race.

Lee v. New Orleans and Great Northern Railroad Co., *supra*, holds that, in the absence of proof as to race, there is no presumption either way. *Jones v. The Commonwealth*, *supra*, holds to the contrary that a man is presumed not to be a negro until he is proven to be one. The latter holding seems to be correct because in most of the cases the establishment of the accused as a negro means his conviction, and as every man is considered innocent until he is proven guilty, why should not a man be presumed to be white or colored until he is proven to be a negro? Prosecutions under such statutes are penal in this nature; strict construction against the state and in favor of the accused is the established rule, governing.

The *Century Dictionary* includes within its definition of the word "colored" as "negroes," persons of mixed negro blood to the degree of quadroons, *i.e.*, those who have one-fourth negro blood, but does not include octoroons. There is a decision in the case of *The People v. Dean*, 14 Michigan, 406, which says that "all those persons having one-fourth black blood were colored."

The statutes mentioned above, the weight of judicial interpretation and popular meaning seem to show that the term "negro" includes all persons whose blood is at least one-quarter black. That is, a black man, a mulatto or a quadroon is a negro. An octoroon is not.